REMARKS

This responds to the Office Action dated April 10, 2007.

In the Office Action, claims 16-39 are noted as pending in the application, claims 16-39 stand rejected, no claims are objected to and no claims are allowed. No claims have been withdrawn from consideration. New claims 40-48 are added.

Rejections

Claims 16, 17, 19-25 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albert, U.S. Patent Application Publication 2004/0033293. Claims 18 and 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albert and further in view of Maegli (5,298,268), Chen et al. (2004/0109932), Schleider (WO 99109871), Emig 200410005385), Rohde et al. (200210062741), Fiorella (3,824,322), Holloway et al. (4,828,858), and Hoover (4,647,463). Claims 33 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoover. Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoover in view of Rohde et al. Claims 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoover. These rejections are respectfully traversed for the following reasons.

The Office Action raises a question regarding the preamble and the use of "film" as opposed to composition. The claims have been amended to recite "composition". Additionally, claims 36 and 37 have been amended to correct their respective dependencies.

Applicant's Disclosure

Applicant discloses compositions to be applied for rimming drink ware. The compositions can be used to moisten glass rims, for example, so that a spice or granular substance can be adhered to or temporarily held on the rim. A beverage is then consumed from the glassware at the same time as the person tastes or otherwise senses the flavor from the spice. The rimming solution can also be used to apply materials having selected colors, aromas and textures.

A number of formulations of spice varying in combinations of colors, flavors, textures and a host of food science ingredients have been created and intended for this specific rimming purpose. Formulations today include expensive flavors, colors and food ingredients for specific performance criteria. The spice preparations and finished drinks themselves can be expensive, demand care, artful presentation and must be efficient in terms of preparation time.

Glass, ceramic and particularly drink-ware that is constructed of plastics and waxes have lower surface tensions than that of Spice. As a result, when introduced into Spice, current solutions will have a greater tendency to be attracted to and adhere to the Spice than to that of the materials constructed of the rim of the drink-ware. After repeated uses, e.g. many introductions of moistened rims into reservoirs of Spice, the Spice may tend to become saturated and ultimately become contaminated with the moisture. Contaminated Spice will cluster and form clumps, an undesirable consequence leading to waste and poor presentation. Moreover, the weight of the spice overcomes the Kinematic Viscosity of the film on the surface of the drink-ware rim and the spice does not adhere to the rim effectively. [See, Applicant's Specification, paragraph 0007.]

Conventional solutions have high water concentrations and therefore have magnetic polarizations associated with water. Such solutions tend to bead into droplets around the surface of the drink-ware rim. Between the droplets of moisture, there is commonly little or no moisture and because the moisture serves as the facilitator to Spice adhering on the rim, when prepared in such a fashion Spice will only adhere to those locations that are moist and in greater quantities in those areas with more moisture. The results are deleterious and those areas that are not moist will be absent Spice and those areas with large droplets will be heavily coated with Spice. Therefore, the composition of the solution affects how well the solution holds the spice or other material. [See, Applicant's Specification, paragraph 0008.]

Rimming solution compositions generally have low Kinematic Viscosity values, and combined with low surface tensions of common drink-ware and of the current solutions, may mean that spice applied to the drink-ware descends or drips down the

inside and / or outside walls of the drink-ware by the force of gravity. Such dripping is an undesirable consequence of present solutions. Therefore, solution kinematic viscosity can be important to use and presentation. [See, Applicant's Specification, paragraph 0009.]

In one example of a rimming composition, the composition consists essentially of a liquid sweetener between nine percent and 50 percent, water between 40 percent and 60 percent, a surfactant between 0.025 percent and 21 percent, and a viscosity/texture modifier between 0 percent and 3 percent. Such a composition can exhibit less of interference in taste with a spice, can exhibit reduced flow of spice due to gravity, and can be easier to use. In one example, the surfactant can be an alcohol, and in another example the surfactant can be polysorbate. The 0.025% concentration of surfactant is disclosed in Example 14, paragraph 0060, as amended January 12, 2007, and other concentrations are disclosed in the examples, as well. No new matter is added.

The sweetener can be corn syrup, sugar dissolved in water, or other compounds. The viscosity/texture modifier can be a gum, or a compound such as propylene glycol alginate. Other examples are provided in Applicant's specification. The solution can have a viscosity greater than that of water, and can be at least 1.5cp, and for example greater than approximately 100cp, and between approximately 100cp and 3000 cp. Higher viscosities can provide better adhesion of the spice, reduced dripping or running of the spice and may help to reduce contamination of the remaining spice supply.

In another example, a composition for a film for the rim of a beverage container may include an edible lipophyllic and hydrophyllic composition having at least one of a surfactant and a texture-viscosity modifier. The composition may also include a sweetener. The composition is combined in such away as to allow coating of the rim of a beverage container at room temperature, namely in the environment of a bar, service establishment, home or similar place. [See, Applicant's Specification, paragraphs 0005, 0010 and 0014, and Abstract.] The surfactant helps the composition to be relatively homogeneous, and also help to more easily coat plastic and/or glass.

Cited Prior Art

Consider now the prior art relied upon in the Office Action. Initially, it is noted that there is no teaching or suggestion that the Office Action references can be combined in the manner indicated. While all of the references relied upon to reject the claims relate to edible substances, some relate to adhesives for edible products, some for inedible products, and some discuss only single-component adhesives whereas others recite multiple component adhesives. Therefore, there is no teaching or suggestion that these references can be combined, and, therefore, the claims are not rendered obvious.

Albert is the primary reference against claims 16-32. Albert is directed to edible adhesives for edible food products. There is no teaching or suggestion that one skilled in the art in edible adhesives for edible food products would look to edible adhesives for inedible products. Additionally, Albert teaches an edible adhesive solution comprising from about 30 to about 70 percent by weight water, 35 to about 50 percent sugar and about five to about 25 percent by weight polysaccharide. As noted in the Office Action, no surfactant is present, and none is suggested.

Furthermore, the Albert polysaccharide is stated in the Office Action to be a viscosity/texture modifier. The preferred polysaccharide range is well above five percent, namely 10 to about 25 percent. Additionally, there is no teaching or suggestion in Albert for the use of polysaccharide or any other viscosity/texture modifier at concentrations below five percent. Because the Albert polysaccharide concentrations are higher, the preferred concentrations are higher and because the applications are edible food products rather than beverage containers, there is no teaching or suggestion that one skilled in the art would look to the Albert concentrations of polysaccharide or other viscosity/texture modifier and make them less than five percent. There is no teaching or suggestion in Albert for using the composition on beverage containers, but instead only for food products. Clearly Applicant has taught inventions patentable over Albert, taken singly or in combination with any other reference of record.

Maegli (5,298,268), Chen et al. (2004/0109932), Schleider (WO 99109871). Emig 200410005385), Rohde et al. (200210062741), Fiorella (3,824,322), Holloway et al. (4,828,858), and Hoover (4,647,463) are even further removed. Maegli, Holloway and Hoover coat edible food products, while Emig, Schleider, Rohde and Fiorella are coating only inedible products. Maegli teaches seasoned snack foods, but notes that "the art has recognized a number of difficulties in connection with adhesive coatings and binders for various foods. The specific problems vary, considerably, with the particular food involved, as briefly discussed [in the patent]." [See, column 3, lines 13-17.] Clearly, the art recognizes that adhesive coatings for edible food products cannot be generalized. As noted in MPEP § 2141.02-IV, "a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." [Citations omitted, emphasis in original.] Furthermore, while it is recognized that the present claims are composition claims, Maegli also states that "it was also found that specific methods must be provided for adequately applying the at least partially amorphous adhesive to the snack food, . . . , among others, particular steps and temperatures for such application." [See, column 4,lines 23-27.] Therefore, there is no teaching or suggestion that one skilled in the art regarding adhesives for one application (edible foods) would look to the teachings regarding adhesives for other applications (inedible foods). Therefore, absent some teaching for doing so, the references should not be combined as asserted in the Office Action. The claims 16-32 rejected on these references should be patentable without more.

In Maegli, a mixture is formed of a monosaccharide and a polyhydric alcohol and a co-solvent. The formulation for the composition is such that heating is required in one or more steps for proper use. Additionally, Maegli suggests nothing about a surfactant. While the Office Action asserts that a polyhydric, aliphatic, saturated alcohol is a surfactant, it is well-known that surfactant alcohols have relatively large number of carbon atoms (about 14 carbons and higher), whereas the alcohol in Maegli is 3-6 carbon atoms.

Holloway teaches a process for honey roasting nuts having approximately 80 to 90 percent sweetener concentration and substantially the rest water. The use of a gum

is also mentioned. Holloway does not teach or suggest a surfactant or that one skilled in the art would consider Holloway compositions for use on inedible products, or ones usable for such applications at room temperature. Therefore, there is no teaching or suggestion to combine the references as stated in the Office Action.

Hoover also teaches compositions for roasted nuts at elevated temperatures. The compositions are oil-based compositions, and there is no teaching or suggestion of using emulsifiers in aqueous-only solutions. The coating is a hot emulsified liquid coating consisting of sucrose, honey, vegetable oil, water, emulsifiers, antioxidants and flavors. As stated in Hoover, "it is important to the successful coating of the nuts that they be at a temperature above 160 degrees Farenheit but less than 350 degrees Farenheit. The coating material should be fluid enough to properly coat the hot nuts which normally requires a coating solution temperature of at least 116 degrees Farenheit." Therefore, Hoover does not teach or suggest an oil and water combination configured to be applied at room temperature. Additionally, "the moisture content of the coating solution should not exceed about 30 percent to obtain the best results." [See, column 2, lines 22-30.] Moreover, Hoover does not teach or suggest that one skilled in the art would consider Hoover compositions for use on inedible products.

Emig does not teach or suggest and specifically teaches away from an aqueous composition having the elements suggested in the Office Action unless a portion of composition is first dried before the next portion of the composition is applied. Moreover, oils can be combined with a polysaccharide and a beverage or soup concentrate, but only so long as no acid or carbonate is included. [See, paragraph 0042.] Additionally, there is no teaching or suggestion that the aqueous/oil combination could be modified to omit the oil component (Emig is applied to reject claims 16-32, which are aqueous compositions), or that once applied to the beverage cup that the composition could accept and hold a granular or powder substance.

Schleider teaches a drinking straw having a flavor coating, but mentions only an adhesive element and mentions no compositions of multiple elements other than a mixture of waxes. [See, page 6.]

Fiorella recites a flavored stirring device for beverages. The recited flavors may include a gum for holding the flavoring tightly to the stirring device and also keeping the product from becoming sticky.

Chen teaches flavor coated drinking straws and edible products using only acids at 40 to 100 weight percent. Acids at such concentrations would materially alter the compositions set forth in claims 16-32, recited as "consisting essentially of" the noted elements. Such claims exclude elements that would materially alter the recited compositions. Additionally, Chen teaches a material including a plasticizer for application to such products as straws. There is no plasticizer in Applicant's composition.

Rohde teaches a coffee filter with coatings and nothing relating to coating of food products such as in Albert. Not only is there no teaching or suggestion that Albert could be combined with any of these references, such a combination would not teach or suggest the claimed inventions.

In view of the foregoing, no sufficient showing has been made that the common sense of one skilled in the art at the time of the inventions would have led one to look to the combination of references and their teachings to arrive either at the elements of the claims 16-32 and 46-48 or the elements of the claims 33-45.

Claims

Consider now the claims in the application.

Claim 16 is an independent composition claim and recites in part:

> "a liquid sweetener between 9% and 50%, water between 40% and 60%, a surfactant between 0.025% and 21%, and a viscosity/texture modifier between 0% and 3% and formulated such that the composition can form a film on a rim of an inedible beverage container and also hold granular or powder substances on the rim of the beverage container."

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or a surfactant between 0.025% and 21%. Albert does not teach a surfactant, as noted in the Office Action. Also, Albert fails to teach or suggest a viscosity/texture modifier between 0% and 3%. Albert is well above three percent, and there is no teaching or suggestion in Albert for a viscosity/texture modifier at anything less than five percent, or even a composition formulated to form a film as recited.

Claims 17-21, 22-25 and 27-32 are dependent directly or indirectly from independent claim 16 and are asserted as being patentable for the same reasons as discussed with respect to claim 16, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claims. Note for example claim 17 reciting in part "wherein the liquid sweetener is corn syrup between 15% and 50%". Note also claim 18 reciting in part "wherein the surfactant is alcohol between 11% and 21%". Note also claim 22 reciting in part "wherein the film has a viscosity between approximately 100cp and 3000 cp". Claim 29 recites in part "wherein the surfactant is between 11 and 21 percent". None of the references taken singly or in combination teach or suggest the claimed combinations.

Claim 22 is an independent composition claim originally dependent indirectly from claim 16. It has been amended to make it independent, and recites in part:

> "consisting essentially of a liquid sweetener between 9% and 50%, water between 40% and 60%, a surfactant between 0% and 21%, and a viscosity/texture modifier between 0% and 3% wherein the composition has a viscosity between approximately 100cp and 3000 cp."

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or a viscosity/texture modifier between 0% and 3% and a viscosity between approximately 100cp and 3000 cp. The references requiring heat are either solid at room temperature or have such a higher

viscosity than 3000cp that claim 22 is not obvious. The viscosity between approximately 100cp and 3000cp are neither taught or suggested by the prior art, taken singly or in combination.

Claim 26 is an independent composition claim originally dependent directly from claim 16. It has been amended to make it independent, and recites in part:

> "a composition for applying a film to a rim of a beverage container consisting essentially of a liquid sweetener between 9% and 50%, water between 40% and 60%, a viscosity/texture modifier between 0% and 3% and a surfactant between 0.25 percent and 2 percent."

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or a viscosity/texture modifier between 0% and 3% and a surfactant between 0.25 percent and 2 percent. Albert's polysaccharide is well above three percent, and there is no teaching or suggestion in Albert for a viscosity/texture modifier at anything less than five percent. Additionally, Albert teaches nothing about a surfactant, and there is no teaching or suggestion to combine any reference listing a surfactant with Albert to arrive at the claimed composition. Clearly claim 26 is patentable over the references.

Claim 33 is an independent composition claim and recites in part:

> "an edible lipophilic and hydrophilic composition including at least one of a surfactant and a texture/viscosity modifier, in such relative concentrations and viscosity to coat a surface on an item of drinkware at room temperature."

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or a composition combined to coat a beverage container at room temperature. Hoover specifically states that the composition is intended to being applied only at elevated temperatures, and no less

than 160 degrees. Claimed 33 is patentable over the references of record, taken singly or in combination.

Claims 34-38 and 46-48 are dependent directly or indirectly from independent claim 33 and are asserted as being patentable for the same reasons as discussed with respect to claim 33, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claims.

Claim 39 is an independent composition claim and recites in part:

> "comprising an edible lipophilic and hydrophilic composition including a surfactant and at least one of sugar and corn syrup in an aqueous solution."

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or the recited surfactant. Clearly, claim 39 is patentable over Hoover.

Claims 40-45 are dependent directly or indirectly from independent claim 39 and are asserted as being patentable for the same reasons as discussed with respect to claim 39, for the combinations in the dependent claims as well as for the additional limitations recited in the dependent claims.

Reconsideration of the application and claims in view of the foregoing amendments and remarks is respectfully requested. Early notice of allowance thereof is earnestly solicited.

This response is being filed with a Two-Month Extension of Time.

Please charge any additional fees that may be due or credit any overpayments to our deposit Account No. 50-0655. If a petition is required in conjunction with this paper, please consider this a request for such a petition.

Respectfully submitted,

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